

STATE OF MICHIGAN
COURT OF APPEALS

MAVIS GLENN,

Plaintiff-Appellee,

v

STRATEGIC STAFFING SOLUTIONS, INC.,

Defendant-Appellant.

UNPUBLISHED

February 1, 2007

No. 265559

Wayne Circuit Court

LC No. 04-414140-NO

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying its motion for summary disposition in this case alleging premises liability and negligence. We reverse the trial court's order, lift the stay previously imposed, and remand for entry of an order granting summary disposition for defendant. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contracted with the City of Detroit to provide support staff to the city's Information Technology Services Department. Plaintiff worked for the city. A time clock sat on top of the reception desk in plaintiff's office. The clock's cord draped over the desk, and was plugged into a surge protector that sat on the floor beneath the desk. Plaintiff tripped over the clock cord and fell to the floor, sustaining injuries.

Plaintiff filed suit alleging, inter alia, that defendant breached its duty to warn of defects and to take reasonable steps to protect her from conditions that caused an unreasonable risk of harm. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it owed no duty to plaintiff because it was not in possession or control of the premises, that plaintiff was not a third-party beneficiary to its contract with the city, and that plaintiff failed to establish that it performed its duty in a negligent manner.

The trial court denied defendant's motion for summary disposition. Although the trial court rejected plaintiff's assertion she was a third-party beneficiary of defendant's contract with

the city,¹ it determined that plaintiff “may be able to show or can show or could show by circumstantial evidence that the wire was misplaced by the Defendant.”

We review the trial court’s decision on a motion for summary disposition de novo. In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), we review the record and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat’l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).² The existence of a disputed fact must be established by admissible evidence. MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002).

We reverse the trial court’s order denying defendant’s motion for summary disposition, lift the stay previously imposed, and remand this matter to the trial court for entry of an order granting defendant’s motion for summary disposition and dismissing the case.

Premises liability is conditioned upon the presence of both possession of and control over the premises. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660-662; 575 NW2d 745 (1998). In her response to defendant’s motion for summary disposition, plaintiff acknowledged that defendant did not possess or control the premises on which her injury occurred. Plaintiff thus waived any claim based on premises liability.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly

¹ The traditional question in analyzing a tort action based on a contract and brought by a plaintiff who is not a party to the contract is “whether the defendant owed a duty to the plaintiff that is separate and distinct from the defendant’s contractual obligations.” *Fultz v Union-Commerce Assoc*, 470 Mich 460, 467; 683 NW2d 587 (2004). Apparently, the trial court found that plaintiff failed to allege that defendant owed her any duty separate and distinct from the contract.

² The trial court did not specify the court rule under which it considered defendant’s motion for summary disposition. However, the motion was supported by documentary evidence; therefore, we review the trial court’s decision under MCR 2.116(C)(10). See *Detroit News, Inc v Policemen & Firemen Retirement System*, 252 Mich App 59, 66; 651 NW2d 127 (2002).